

### **REMARKS**

Claims 1-3, 5, 6, 8-12, 14-17, 19, 20, 22, 23, 25 and 35-59 are now pending in the application. Claims 58 and 59 are added by this amendment. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **APPLICANT INITIATED INTERVIEW SUMMARY**

Applicants thank the Examiner for the interview granted on October 29, 2008 with Applicants' representative. During the interview, Independent Claims 1, 17, 22, and 43 were discussed with the Examiner. Amendments as discussed with the Examiner are included in this amendment. Applicants' representative believes that an agreement was reached that at least the amendments to Independent Claims 1, 17, and 22 overcame the rejections in the Office Action mailed July 31, 2008. In addition, Applicants have provided amendments and arguments regarding Independent Claims 43 and 55. During the interview, Applicants believe that the Examiner agreed to contact Applicants' representative if all of the independent claims are not found to be in condition for allowance after entering this amendment.

### **CLAIMED OBJECTION**

Claims 11, 12, 14, 39 and 49 stand objected to because of the following informalities: they all recite the limitation "standoff features" when line 14 of claim 11 defines the limitation as "standoff members." Claim 11 has been amended to delete "member" and replace it with --features--. Therefore, Applicants respectfully request

that this objection be withdrawn.

#### **REJECTION UNDER 35 U.S.C. § 112**

Claims 35, 36, 41, 49 and 57 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

Claim 35 has been non-narrowingly amended to clarify Claim 35.

Applicants have non-narrowingly amended Claim 1 to recite "substantially spherical", which Applicants submit clarifies Claim 36.

Claim 41 has been amended to depend from Independent Claim 17 and to recite "an elastomer band".

Claims 49 and 57 have been amended to clarify the elements recited therein.

Applicants respectfully submit that the rejections of Claims 35, 36, 41, 49, and 57 have been overcome or rendered moot by this amendment and request that the Examiner withdraw the rejections under 35 U.S.C. §112.

#### **REJECTION UNDER 35 U.S.C. § 102 AND 103**

Claims 17, 19, 41 and 50 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ray (U.S. Pat. No. 3,457,922). Claims 1, 3, 5, 9 and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Henderson et al. (U.S. Pat. Pub. No. 2003/0114752A1) in view of Ghajar et al. (U.S. Pat. No. 4,998,938). Claims 2, 6, 36 and 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Henderson

et al. in view of Ghajar et al. as applied to the claim 1 above, and further in view of Mowlai-Ashtiani (U.S. Pat. No. 6,110,182). Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson et al. in view of Ghajar et al. as applied to claim 1 above, and further in view of D'Urso (U.S. Pat. No. 5,752,962). Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson et al. in view of Ghajar et al. as applied to claim 1 above, and further in view of Ray. Claims 11, 12, 14-16, 39 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Henderson et al. in view of Mowlai-Ashtiani and Ghajar et al. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson et al. in view of Mowlai-Ashtiani and Ghajar et al. as applied to claim 11 above, and further in view of Ray. Claims 22, 23 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over D'Urso in view of Mowlai-Ashtiani and Hennig (U.S. Pat. No. 6,328,748). Claims 22 and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Henderson et al. in view of Mowlai-Ashtiani, D'Urso and Hennig. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson in view of Mowlai-Ashtiani, D'Urso, and Hennig as applied to claim 22 above, and further in view of Ray. Claims 43-47, 53, and 57 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Henderson et al. in view of Mowlai-Ashtiani and Magee. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson et al. in view of Mowlai-Ashtiani and Magee as applied to claim 43 above, and further in view of Ray. Claims 55 and 56 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson et al. in view of D'Urso and McGee. These rejections are respectfully traversed.

Applicants have discussed the cited references to Magee et al., D'Urso, Hennig, Mowlai-Ashtiani, Henderson et al., and Ghajar et al. Accordingly, Applicants do not discuss these references in general, but will discuss them in relation to the specific rejections herein. Applicants do, however, incorporate by reference Applicants' prior statements regarding these references in the amendments and responses previously filed in the subject application.

Newly cited reference to Ray is directed to a stereotaxic surgical instrument that includes a tripod base 11 having three foot plate assemblies 12 through which a nail 27 can be passed to hold the tripod base in place. Connected to the tripod base 11 is a first ball 13 from which an arm 16 extends. Positioned in the arm is a second ball 18 which is held in place with first and second jaw members 16', 16" and a set screw 19. A guide bolt 20 in the second ball defines a guide. A guide area, defined by the lines 22, 23, does not intersect any portion of the tripod base 11. See Ray, Fig. 1. The guide bolt can guide a drill to penetrate bone. See Ray, col. 4, lns. 50-52 and Fig. 10.

Independent Claim 1 has been amended to recite "a deformable substantially spherical socket for engaging with the spherical portion." The spherical socket is included with the base unit; the longitudinal guide portion defines a guide axis and is coupled to the spherical portion. Independent Claim 1 is rejected in light of Henderson in view of Ghajar et al. As discussed with the Examiner, however, neither Henderson et al., nor Ghajar et al. disclose a spherical socket for engaging a spherical portion, as recited in Independent Claim 1. Applicants respectfully submit that Henderson et al. discloses that a locking plate 432 can be rotated into a locking position to lock a guide ball 428 in a fixed position. As illustrated in Fig. 4C of Henderson et al., the guide ball

[sic] 528 appears to be positionable within an opening of a locking plate screw portion 1040 onto which the locking plate 432 is screwed. A further washer member 1050 (not discussed) appears to fit between the ball portion 428 and the locking plate 432 and the threaded locking plate 1040. Accordingly, the threaded portion 1040 does not appear to directly engage the ball 428. In addition, none of the portions appear to be deformable as recited in Independent Claim 1.

As discussed with the Examiner, therefore, Applicants respectfully submit that Independent Claim 1 is in condition for allowance in light of the art cited.

Independent Claim 11 has been amended to recite "a base unit, having a spherical socket for engaging with the spherical portion." Applicants respectfully submit that Independent Claim 11 is in condition for allowance for the same reasons discussed regarding Independent Claim 1 above.

Independent Claim 17 has been amended to recite "at least two standoff features . . . attached to the base unit . . . wherein the guide axis extends through the base unit and between the at least two standoff features." A longitudinal guide portion has a longitudinal opening that includes the guide axis, as recited in Independent Claim 17. As discussed above, the guide axis of Ray does not extend between any portions that can reasonable be understood to be standoff features, as recited in Independent Claim 17.

As discussed with the Examiner during the interview, the arm 16 of Ray positions the guide bolt 20 a distance from the tripod base 11. Accordingly, the guide bolt 20 of Ray is positioned away from the base 11 that interconnects it to a surface. In addition, the guide bolt does not extend between any portions that can reasonably be understood

to be standoff features. Accordingly, as discussed with the Examiner, Applicants respectfully submit that Independent Claim 17 is in condition for allowance.

Independent Claim 22 has been amended to recite “wherein at least one standoff feature includes a shelf extending into the standoff feature that is operable with the at least one screw to determine an attachment thickness.” Applicants respectfully submit that a shelf extending into a standoff feature is not disclosed or fairly rendered obvious by the art cited in the rejections. Even the foot portion of D’Urso simply has an upper surface of a foot, D’Urso does not disclose or render obvious a shelf that extends into a standoff feature. Accordingly, as discussed with the Examiner, Applicants respectfully submit that Independent Claim 22 is in condition for allowance.

Independent Claim 43 has been amended to recite “a base unit, including: . . . a single deformable spherical socket . . . a standoff feature extending from the base unit.” Applicants respectfully submit that the references cited in the rejection do not, either alone or in combination, anticipate or fairly render obvious a base unit including a single deformable socket and standoff feature extending from the base unit.

In addition, Independent Claim 43 recites “a retaining force applying member operable to hold the attaching device relative to the passage.” Applicants respectfully submit that the combination of Magee with Henderson et al. and Mowlai-Ashtiani to render obvious Independent Claim 43, including the element of “a retaining force applying member” is improper. Henderson et al. and Mowlai-Ashtiani are not related to a bone fixation device introducer disclosed in Magee. Accordingly, it appears to be only through improper hindsight reasoning that a combination of Magee with Henderson et al. and Mowlai-Ashtiani is made. Even assuming that the combination is proper,

however, a retaining force applying member to hold an attaching device relative to the passage defined through a standoff feature, as recited in Independent Claim 43, is not rendered obvious. The combination does not teach a standoff feature, a passage, and a retaining force applying member recited in Independent Claim 43. Accordingly, at least one element is completely missing from the combination of the references.

Additionally, new dependent Claim 59 recites "wherein the retaining force applying member is selected from a group consisting of an insert near the passage, a structure protruding into the passage, and an elastomer band." As discussed with the Examiner, none of the references, either alone or in combination, disclose an insert near a passage, a structure protruding into a passage, or an elastomeric band. Even assuming that Magee discloses a retaining force applying member, the member 62, referenced in the Office Action, extends from a surface 32 of a bone fixation device. See Magee, col. 5, Ins. 30-40 and Fig. 10. None of the references overcome the failure of Magee.

Claim 59 depends from Independent Claim 43, which is an apparatus claim. Accordingly, a method of retaining a member is not being claimed, but rather a structure for retaining. Applicants respectfully submit that the structure recited in at least dependent Claim 59 is not in any of the references cited in the rejections. Accordingly, there is at least one completely missing element from the references recited in dependent Claim 59. Even assuming that Magee discloses a retaining force applying member, it is not obvious to have any of the other structures recited in dependent Claim 59. At most, only hindsight reasoning could be used to identify structures that can be retaining force applying members.

Finally, Independent Claim 55 recites “an elastomer band coupled to the base unit and operable to retain the attaching device near the passage.” As discussed above, in relation to dependent Claim 59, Independent Claim 55 specifically recites the structure “elastomer band.” The elastomer band recited in Independent Claim 55 is not disclosed or suggested in any of the references cited in the rejections. Accordingly, the structure of the elastomer band, which is part of the apparatus recited in Independent Claim 55, is not anticipated or rendered obvious by the art cited in the rejections. Accordingly, Independent Claim 55 includes an element that is completely missing from the references cited in the rejection.

#### **NEW CLAIMS**

New Claims 58 and 59 are added by this amendment, both of which are supported by the application as filed and should be examined with the other non-withdrawn claims pending in this application. New Claim 58 is supported by the application as filed, such as in the figures. Applicants respectfully submit that Claim 58, which recites “wherein the deformable spherical socket is operable to allow the guide axis to be positioned in at least two angles relative to the base unit,” is not anticipated or fairly rendered obvious by the art cited in the rejections. As discussed above, the combination of Henderson et al. and Ghajar et al. does not appear to be proper. In addition, Ghajar et al. discloses that a unique attachment angle is formed and does not disclose allowing more than one angle to be produced. See Ghajar, col. 6, Ins. 45-50. Accordingly, dependent Claim 58 is in condition for allowance.

New Claim 59 has been added, and is discussed above. Support for new Claim




59 can be found throughout the application as filed, including pgs. 12-14 and Figs. 3A through 3C. The patentability of dependent Claim 59 is discussed above.

#### CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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